

## SUPPLEMENT NO. 2 TO PART 774—GENERAL TECHNOLOGY AND SOFTWARE NOTES

1. *General Technology Note.* The export of “technology” that is “required” for the “development”, “production”, or “use” of items on the Commerce Control List is controlled according to the provisions in each Category. “Technology” “required” for the “development”, “production”, or “use” of a controlled product remains controlled even when applicable to a product controlled at a lower level.

License Exception TSU is available for “technology” that is the minimum necessary for the installation, operation, maintenance (checking), and repair of those products that are eligible for License Exceptions or that are exported under a license.

N.B.: This does not allow release under a License Exception of the repair “technology” controlled by 1E002.e, 1E002.f, 8E002.a, or 8E002.b.

N.B.: The “minimum necessary” excludes “development” or “production” technology and permits “use” technology only to the extent “required” to ensure safe and efficient use of the product. Individual ECCNs may further restrict export of “minimum necessary” information.

2. *General Software Note.* License Exception TSU (“mass market” software) is available to all destinations, except countries in Country Group E:1 of Supplement No. 1 to part 740 of the EAR, for release of software that is generally available to the public by being:

a. Sold from stock at retail selling points, without restriction, by means of:

1. Over the counter transactions;
2. Mail order transactions;
3. Electronic transactions; or
4. Telephone call transactions; and

b. Designed for installation by the user without further substantial support by the supplier.

NOTE: The General Software Note does not apply to “software” controlled by Category 5—part 2 (“Information Security”). For “software” controlled by Category 5, part 2, see Supplement No. 1 to part 774, Category 5, part 2, Note 3—Cryptography Note.

[69 FR 46087, July 30, 2004]

## SUPPLEMENT NO. 3 TO PART 774—STATEMENTS OF UNDERSTANDING

(a) *Statement of Understanding—medical equipment.* Commodities that are “specially designed for medical end-use” that “incorporate” commodities or software on the Commerce Control List (Supplement No. 1 to part 774 of the EAR) that do not have a reason for control of Nuclear Nonproliferation (NP), Missile Technology (MT), or Chemical & Biological Weapons (CB) are designated by

the number EAR99 (*i.e.*, are not elsewhere specified on the Commerce Control List).

NOTES TO PARAGRAPH (a): (1) “Specially designed for medical end-use” means designed for medical treatment or the practice of medicine (does not include medical research).

(2) Commodities or software are considered “incorporated” if the commodity or software is: Essential to the functioning of the medical equipment; customarily included in the sale of the medical equipment; and exported or reexported with the medical equipment.

(3) Except for such software that is made publicly available consistent with §734.3(b)(3) of the EAR, commodities and software “specially designed for medical end-use” remain subject to the EAR.

(4) *See also* §770.2(b) interpretation 2, for other types of equipment that incorporate items on the Commerce Control List that are subject to the EAR.

(5) For computers used with medical equipment, *see also* ECCN 4A003 note 2 regarding the “principal element” rule.

(6) For commodities and software specially designed for medical end-use that incorporate an encryption or other “information security” item subject to the EAR, *see also* Note 1 to Category 5, Part II of the Commerce Control List.

(b) *Statement of Understanding—Source Code.* For the purpose of national security controlled items, “source code” items are controlled either by “software” or by “software” and “technology” controls, except when such “source code” items are explicitly decontrolled.

(c) *Category 5—Part 2—Note 4 Statement of Understanding.* All items previously described by Notes (b), (c) and (h) to 5A002 are now described by Note 4 to Category 5—Part 2. Note (h) to 5A002 prior to June 25, 2010 stated that the following was not controlled by 5A002:

Equipment specially designed for the servicing of portable or mobile radiotelephones and similar client wireless devices that meet all the provisions of the Cryptography Note (Note 3 in Category 5, Part 2), where the servicing equipment meets all of the following:

(1) The cryptographic functionality of the servicing equipment cannot easily be changed by the user of the equipment;

(2) The servicing equipment is designed for installation without further substantial support by the supplier; and

(3) The servicing equipment cannot change the cryptographic functionality of the device being serviced.

(d) *Statement of Understanding—Used Goods.* The specifications in the Commerce Control List apply equally to new or used goods. In the case of used goods, an evaluation by the

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Bureau of Industry and Security may be carried out in order to assess whether the goods are capable of meeting the relevant specifications.

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**PARTS 775–780 [RESERVED]**